

IT IS FURTHER ORDERED that the motion of the UniPoint defendants to transfer the case to the Northern District of Texas [#60] is denied as moot.

IT IS FURTHER ORDERED that the motion of Transcom Holding, LLC, to dismiss for lack of jurisdiction [#63] is denied as moot.

IT IS FURTHER ORDERED that the motion of Transcom Communications, Inc., to dismiss for failure to state a claim [#85] is denied as moot.

IT IS FURTHER ORDERED that the Clerk of Court shall administratively close this case as to defendants VarTec Telecom, Inc. and Transcom Enhanced Services, LLC. The Court shall retain jurisdiction to permit a party to move to re-open the case. Any motion to re-open the case must be filed not later than thirty (30) days after conclusion of the bankruptcy proceedings.


CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of August, 2005.

EXHIBIT B

POINTONE

Stad L. Ples
Direct Dial: 202-742-5737
sples@pointone.com

February 1, 2005

William A. Haas
Associate General Counsel
McLeod USA
McLeod USA Technology Park
6400 C Street S.W.
Cedar Rapids, IA 52408-3177

Re: Your letter dated January 24, 2005

Dear Mr. Haas:

As requested by McLeodUSA, PointOne sends this letter in response to your letter of January 24, 2004.

In your letter you state that Qwest has advised you that it believes that "certain traffic being terminated via the local interconnection service trunks by McLeod USA is long distance toll traffic subject to terminating access charges." In addition, you also state that Qwest "claimed that ANIs associated with calls that had originated with Qwest end users were not being delivered when the calls were being terminated to Qwest." Based on these allegations by Qwest, you proffered several questions that PointOne answers below to the best of its ability.

As an initial matter, PointOne has been and continues to be in full compliance with the MSA between PointOne and McLeodUSA. Specifically, as required by paragraph 4(c) of Addendum No. 1 to the MSA, the "traffic routed [by PointOne] to McLeodUSA over the facilities which are the subject of this agreement" is "traffic to which neither interstate nor intrastate access charges apply, according to the regulations of the FCC ..."

PointOne values the services McLeod provides to it and is eager to resolve any confusion resulting from the FCC's AT&T Order. To this end, prior to answering the specific questions proffered by McLeod, PointOne provides a brief discussion of the state of the law regarding access charges.



A. Existing Legal Regime

The FCC requires IXCs (and only IXCs) to pay access charges to LECs for use of the LECs' facilities to originate or terminate long-distance calls. See 47 C.F.R. § 69.5(b) (providing that carrier switched access charges "shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services") (emphasis added); see also *MTS and WATS Market Structure, Phase I*, Memorandum Opinion & Order, 97 FCC 2d 682, 707 ¶ 63 (1983) ("*MTS and WATS Market Structure Order*"). The FCC developed (and repeatedly reaffirmed) a different rule for ISPs (also called "enhanced service providers" or "ESPs"), a classification covering providers with services that "offer[] a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). Even though ISPs "may use incumbent LEC facilities to originate and terminate interstate calls," the Commission decided that "ISPs should not be required to pay interstate access charges," regardless of whether the call might colloquially seem "local" or "long distance." *Access Charge Reform Order*, 12 FCC Rod. at 16,131-32 ¶ 341 (1997) (emphasis added); see also *MTS and WATS Market Structure Order*, 97 FCC 2d at 715 ¶ 83. This distinction, known as the "ESP exemption," allows "ISPs [to] purchase services from incumbent LECs under the same intrastate tariffs available to end users" rather than those applicable to carriers. *Access Charge Reform Order*, 12 FCC Rod. at 16,132 ¶ 342. As a matter of definition and for purposes of assessing charges, therefore, the FCC treats ISPs as end users exempt from the "carrier's carrier" access charges paid by IXCs. Accordingly, LECs receive either reciprocal compensation or end-user charges for such traffic. See 47 U.S.C. § 251(b)(5) (reciprocal compensation); *MTS and WATS Market Structure Order*, 97 FCC 2d at 715 ¶ 83 (end-user charges).

Current FCC Rule 69 (47 C.F.R. Part 69, entitled "Access Charges," regulates the access charges that form the entirety of SBC's federal claims in this case. See 47 C.F.R. § 69.1(a) ("This part establishes rules for access charges for interstate or foreign access services") and (b) (providing that charges for access services "shall be computed, assessed, and collected ... as provided in this part"). The rule divides "access charges" into two classes, "carriers' carrier" charges and "end user" charges. See 47 C.F.R. § 69.4(a) and (b) (providing for "end user charges for access service" and "carriers' carrier charges for access service"). Similarly, Section 69.5 affirmatively classifies access customers, the "persons to be assessed," as either "end users" or "carriers," as follows:

§ 69.5 Persons to be assessed.

(a) End user charges shall be computed and assessed upon end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part.

(b) Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.

(c) Special access surcharges shall be assessed upon users of exchange facilities that interconnect these facilities with means of interstate or foreign telecommunications to the extent that carrier's carrier charges are not assessed upon such interconnected usage. As an interim measure pending the development of techniques accurately to measure such interconnected use and to assess such charges on a reasonable and non-discriminatory basis, telephone companies shall assess special access surcharges upon the closed ends of private line services and WATS services pursuant to the provisions of § 69.115 of this part.

47 C.F.R. § 69.5 (emphasis added).

Customers classified as end users pay "end user charges" whereas IXC's, which use local exchange switching facilities for the provision of interstate telecommunications services, pay "carrier's carrier charges." 47 C.F.R. § 69.5(b). The regulation, by its black letter, applies "carrier's carrier charges" to IXC's and only IXC's, not ISPs and other end users.

B. The FCC's AT&T Order Did Not Change the Rule that Access Charges May be Assessed Only Upon Interexchange Carriers, and It Does Not Provide the Basis for an Access-Charge Claim Against PointOne

The FCC's AT&T Order applied, rather than reversed, the pre-existing rule of law that only IXC's are liable for access charges. See *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Order, 19 FCC Rod 7457, 7471 ¶ 23 n.62 (2004) (AT&T Order) (explaining again that "access charges are to be assessed on interexchange carriers," not intermediate providers). In the Order, the Commission ruled that a specific AT&T service "is a telecommunications service and is subject to section 69.5(b) of the Commission's rules." *Id.* at 7442 ¶ 24.

In its AT&T Order, the Commission found that AT&T operated as an IXC providing telecommunications service (and that it was subject to access charges as a result) when it used IP to transport "1+" calls (i.e., long-distance calls for which a caller dials 1, then the area code, and then the number) under certain narrow circumstances. AT&T Order, 19 FCC Rod. at 7466-67 ¶¶ 1, 13 n.56.

In addition, the FCC addressed the situation where an IXC connects to a terminating local exchange carrier through another, intermediary non-IXC as follows:

We note that, pursuant to section 69.5(b) of our rules, access charges are to be assessed on interexchange carriers. 47 C.F.R. § 69.5(b). To the extent terminating LECs seek application of access charges, these charges should be assessed against interexchange carriers and not against any intermediate LECs that may hand off the traffic to the terminating LECs, unless the terms of any relevant contracts or tariffs provide otherwise. *Id.* at '472 ¶ 23 n.92.

Although PointOne is an intermediary ISP rather than an intermediary LEC, the application of the FCC's rule 69.5(b) is the same – any applicable access charges "are to be assessed on interexchange carriers." Thus, the AT&T Order clearly did not change the basic law: access charges may be assessed only on IXCs.

Responses to Particular Questions:

1. PointOne is a wholesale provider of IP-enabled services to service providers, including interexchange and local exchange carriers, cable systems, wireless providers, ISPs, enterprise customers, multimedia companies and residences. PointOne offers "any-to-any" services over its state-of-the-art, Advanced IP Communications Network. What this means is that PointOne transmits and routes traffic between any origination and termination device (including phones, computers, PDAs, wireless devices, etc.) without discriminating based on the form or capability of the device.
2. PointOne is not and has never been a regulated interexchange carrier to which rule 69.5(b) and the FCC's AT&T Order applies. Please see the extended legal discussion above. Instead, as the service orders between PointOne and McLeod make clear, under existing Commission precedent PointOne is an "information" or "enhanced" service provider, and in any event is not an interexchange carrier. PointOne has always purchased McLeodUSA's PRI product as an end user, pursuant to FCC Rule 69.5(a), in order to provide IP-enabled services to PointOne customers. As you have referenced the complaint SBC has filed against PointOne, you might be interested to know that PointOne has moved to dismiss that complaint on the basis that SBC does not even *allege* that PointOne is an IXC, and there is no basis in law for imposing access charges on any entity other than an IXC. We hope that a favorable court ruling on this question this spring will dispose of SBC's claims.
3. In accordance with PointOne's corporate policy and the contractual obligation delineated in paragraph 4(c) of Addendum No. 1 to the PointOne/McLeodUSA MSA, PointOne does not intentionally "strip, change, or in anyway manipulate the number of the calling party

February 1, 2005

associated with each individual call ..." Moreover, PointOne does not know whether or how "ANI information is being lost before delivery to McLeodUSA for termination," but we would be happy to look further into the matter if you can provide us with more information.

If you have additional questions, please do not hesitate to contact me.

Sincerely,

/s/ Staci L. Pies

Staci L. Pies
Vice President,
Governmental and Regulatory Affairs

cc: Mike Holloway
Sam Shiffman
Tom Nelson

EXHIBIT C

POINTONE.

Gail McCulloch
Vice President,
Customer Services

PointOne
6500 River Place Blvd.
Building: 2 Suite: 200
Austin, TX 78750

August 16, 2005

RE: NOTIFICATION OF RATE ADJUSTMENT TO METERED VPN SERVICES
AND VARIABLE RATE PRIVATE LINK (VRPL)

Dear PointOne Customer,

This letter serves as final and formal notification, that effective August 21, 2005, the new effective per minute rate for non-volume-committed Metered VPN services traffic and VRPL traffic is [\$0.0262] / minute of use. This change is effective across the entire PointOne customer base. If you are receiving this notice our records show that you do not have an existing term 'take-or-pay' agreement for the Metered VPN services or VRPL traffic utilized.

We regret having to make this adjustment, but business conditions do not offer another option. We are committed to providing you our customer with a superior service, the latest technologies and highest quality standards.

Should you have any questions, please feel free to contact your respective sales representative or me at 512.735.1376.

Sincerely,

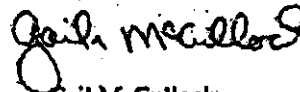

Gail McCulloch

EXHIBIT D

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Petition for Declaratory Ruling That)
UniPoint Enhanced Services, Inc., d/b/a)
PointOne and Other Wholesale Transmission)
Providers Are Liable for Access Charges)
)
)
)

WC Docket No. _____

DECLARATION OF ROBERT A. DIGNAN

1. My name is Robert Dignan. I am General Manager-Fraud Detection and Prevention for SBC Operations, Inc. I have been employed with SBC Communications Inc. ("SBC") or its predecessors¹ for over 25 years. I am currently responsible for various areas of operations including detection and analysis of misrouted calls across the SBC networks. I have held a variety of positions including manager of switched access billing, manager of marketing planning, account manager serving various long distance customers. I have worked in SBC's wholesale organization for the past 19 years. My current office location is in Chicago.
2. In 2002, AT&T filed a petition for a declaratory ruling that "IP-in-the-middle" interexchange voice calls are exempt from access charges. On April 21, 2004, in

¹ Prior to October 8, 1999, I worked for the Ameritech companies. SBC and Ameritech merged on October 8, 1999.

the *AT&T Access Charge Order*,² the Commission rejected AT&T's request. Specifically, the Commission ruled that the following type of service, as described by AT&T in the proceeding, is a telecommunications service subject to access charges: "an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology."³ The FCC also ruled that "[o]ur analysis in this order applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."⁴

3. Despite this ruling, SBC local exchange carriers continue to experience substantial access charge evasion on "IP-in-the-middle" calls (i.e., interexchange calls that both originate and terminate on the PSTN and that meet the other two criteria set forth in the *AT&T Access Charge Order*) that terminate on SBC's local exchange networks. SBC has substantial evidence that the vast majority of this continuing access charge avoidance is attributable to so-called "least cost routers" ("LCRs") that provide the "IP-transport" piece of IP-in-the-middle long distance calls. These LCRs have contracts with various retail long-distance providers or other entities to carry their interexchange calls for some portion of their route.

² Order, *Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97 (Apr. 21, 2004) ("*FCC Access Charge Order*").

³ *Id.* ¶ 1.

⁴ *Id.*

The vast majority of these interexchange calls both originate and terminate on the PSTN in circuit switched format, a substantial portion of which are destined for SBC end users.

4. Under the typical scenario, the LCR receives an IP-in-the-middle call from the original long-distance carrier or an intermediary third party. The call may have already been converted to IP format before the LCR receives it, or the LCR may convert the call to IP format after receiving it. The LCR then transports the call across its IP network for some distance. The LCR then converts the call back to circuit-switched format and hands it to a CLEC over a primary rate interface ("PRI") circuit. The CLEC then routes the call to the SBC local exchange carrier over a local interconnection trunk.
5. Access charges are evaded through this practice because SBC's Feature Group D trunks are circumvented. Feature Group D trunks are designed to receive and measure interexchange traffic so that the SBC local exchange carrier (or any other local exchange carrier directly connected to SBC that is jointly providing access) can bill appropriate access charges for the traffic. Local interconnection trunks, in contrast, are set up to receive local traffic, and therefore are not designed to measure and bill for interexchange traffic. Indeed, precisely because these local interconnection trunks are not intended for interexchange traffic, in many cases the interexchange traffic delivered over local interconnection trunks is not billed *at all* – even at the lower reciprocal compensation rates that apply to non-interexchange traffic – which means that the terminating carrier(s) pay *nothing* for their use of SBC's networks.

6. SBC's tariffs require that interexchange calls be terminated over Feature Group D facilities, regardless of whether the company that is terminating the interexchange calls to an SBC local network is the originating long-distance carrier or, instead, is carrying the calls "downstream" from the originating carrier. In the latter situation – where multiple carriers are involved – the SBC local exchange carrier typically bills access charges to the last company in the stream that carries the interexchange calls (i.e., the company that hands the calls to the SBC local exchange carrier over the Feature Group D trunk), and it is this company that remits payment for the access charges to the SBC local exchange carrier (and to any other local exchange carrier directly connected to SBC that is jointly providing access). This is the common practice in the telecommunications industry, and legitimate downstream carriers of interexchange calls – i.e., carriers that provide wholesale transmission to other carriers – have understood and followed it for years. The LCRs described in this declaration, however, are intentionally circumventing this well-understood process in order to unlawfully terminate interexchange calls without paying access charges.
7. A variety of evidence exists that the access avoidance scheme continues to occur notwithstanding the *AT&T Access Charge Order*. For example, SBC routinely conducts PSTN-to-PSTN interexchange test calls to determine if they are being terminated over Feature Group D trunks. These test calls are made from an ordinary SBC PSTN phone in one SBC exchange to another ordinary SBC PSTN phone in an different exchange (for example, from a phone connected to the SBC local exchange in San Antonio to a phone connected to the SBC local exchange in

Dallas). The calls are directed to a variety of outgoing long-distance carriers over outgoing Feature Group D facilities. As a call is made, SBC identifies the carrier to which the call is sent and the facility over which the call enters SBC's network for termination. SBC's data indicates that a substantial number of these calls continue to terminate into SBC's local exchange networks over local interconnection trunks, rather than over Feature Group D trunks.

8. SBC has been able to discern that the vast majority of interexchange traffic that continues to be terminated to SBC's networks over local interconnection trunks is being delivered to CLECs by LCRs that claim to be "enhanced service providers" exempt from access charges. SBC has uncovered this information through a variety of means, including the issuance of trouble tickets to the CLECs that deliver suspect interexchange calls to SBC over local interconnection trunks. On numerous occasions, in response to these trouble tickets, the CLECs have indicated to SBC representatives that the traffic at issue was delivered to the CLECs by companies that are known to claim that they are "enhanced service providers" and thus entitled to deliver interexchange traffic to CLECs as local traffic. Two of these companies are UniPoint Enhanced Services, Inc., d/b/a PointOne ("PointOne") and Transcom Enhanced Services, LLC ("Transcom").
9. PointOne and Transcom are two of the principal LCRs involved in the access avoidance practice described in this declaration. Because PointOne and Transcom do not terminate traffic to SBC over Feature Group D trunks, and indeed have intentionally and improperly avoided doing so, it is difficult to determine an exact dollar amount of the access charge loss SBC has suffered and

continues to suffer because of these two companies' activities. SBC conservatively estimates, however, that the total access loss it has suffered to date because of all LCRs that engage in this practice (i.e., whether the LCR is PointOne, Transcom, or some other similarly situated company) exceeds \$100 million, and that its ongoing access loss from their activities is in excess of \$1 million per month.

10. This concludes my declaration.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 15, 2005.

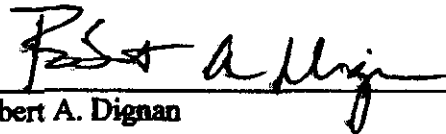

Robert A. Dignan

EXHIBIT E

Exhibit E

PointOne filings at the FCC in WC Docket No. 02-361, including notices of meetings with FCC staff and/or Commissioners:

Ex Parte Letter from Dana Frix and Kemal Hawa, Chadbourne & Parke LLP, to Marlene Dortch, FCC, WC Docket Nos. 02-361 et al. (Jan. 8, 2004);

Ex Parte Letter from AT&T, Callipso, Castel, ITXC, Nuera Communications, PingTone, PointOne, Telic, Transnexus, Inc., and The VON Coalition, to Michael Powell, Chairman, FCC, WC Docket No. 02-361 (Jan. 28, 2004);

Ex Parte Letter from Dana Frix and Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket No. 02-361 (Feb. 24, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket No. 02-361 (Mar. 3, 2004);

Letter from Callipso, CallSmart, ITXC, LocalDial, PingTone, PointOne, Telic, TransCom, USDataNet, and The Von Coalition, to The Honorable Joe Barton, The Honorable John D. Dingell, and The Honorable Charles "Chip" Pickering, WC Docket No. 02-361 (Mar. 29, 2004);

Letter from Callipso, CallSmart, ITXC, LocalDial, PingTone, PointOne, Telic, TransCom, USDataNet, and The Von Coalition, to Senator John McCain and Senator Fritz Hollings, WC Docket No. 02-361 (Mar. 29, 2004);

Ex Parte Letter from Dana Frix and Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 8, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket No. 02-361 (Apr. 14, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 14, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 14, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 14, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 14, 2004);

Ex Parte Letter from Kemal Hawa, Chadbourne & Parke LLP, Counsel for PointOne, to Marlene Dortch, FCC, WC Docket Nos. 02-361, et al. (Apr. 14, 2004).

Transcom filings at the FCC in WC Docket No. 02-361, including notices of meetings with FCC staff and/or Commissioners:

Ex Parte Letter from W. Scott McCullough, Stumpf Craddock Massey & Pulman, Counsel for Transcom Enhanced Services, LLC, to Marlene Dortch, FCC, WC Docket No. 02-361 (Sept. 23, 2003);

Ex Parte Letter from W. Scott McCullough, Stumpf Craddock Massey & Pulman, Counsel for Transcom Enhanced Services, LLC, to Marlene Dortch, FCC, WC Docket No. 02-361 (Dec. 23, 2003);

Ex Parte Letter from W. Scott McCullough, Stumpf Craddock Massey & Pulman, Counsel for Transcom Enhanced Services, LLC, to Marlene Dortch, FCC, WC Docket No. 02-361 (Jan. 13, 2004);

Letter from Callipso, CallSmart, ITXC, LocalDial, PingTone, PointOne, Telic, TransCom, USDataNet, and The Von Coalition, to The Honorable Joe Barton, The Honorable John D. Dingell, and The Honorable Charles "Chip" Pickering, WC Docket No. 02-361 (Mar. 29, 2004);

Letter from Callipso, CallSmart, ITXC, LocalDial, PingTone, PointOne, Telic, TransCom, USDataNet, and The Von Coalition, to Senator John McCain and Senator Fritz Hollings, WC Docket No. 02-361 (Mar. 29, 2004);

Ex Parte Letter from W. Scott McCullough, Stumpf Craddock Massey & Pulman, Counsel for Transcom Enhanced Services, LLC, to Marlene Dortch, FCC, WC Docket No. 02-361 (Apr. 8, 2004).

EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Southwestern Bell Telephone, L.P., Pacific
Bell Telephone Company, Nevada Bell
Telephone Company, Michigan Bell
Telephone Company, Illinois Bell
Telephone Company, Indiana Bell
Telephone Company, Ohio Bell Telephone
Company, Wisconsin Bell, Inc., The
Southern New England Telephone
Company, and The Woodbury Telephone
Company,

Plaintiffs,

v.

VarTec Telecom, Inc., PointOne
Telecommunications, Inc., Unipoint
Holdings, Inc., Unipoint Enhanced
Services, Inc. (d/b/a "PointOne"), Unipoint
Services, Inc., Transcom Holdings, Inc.,
Transcom Enhanced Services, LLC,
Transcom Communications, Inc., and
JOHN DOES 1-10

Defendants.

Case No. 4:04CV1303CEJ

JURY TRIAL REQUESTED

FIRST AMENDED COMPLAINT

Plaintiffs Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company,
Nevada Bell Telephone Company, Michigan Bell Telephone Company, Illinois Bell
Telephone Company, Indiana Bell Telephone Company, Ohio Bell Telephone Company,
Wisconsin Bell, Inc., The Southern New England Telephone Company, and The
Woodbury Telephone Company, for their Complaint against defendants VarTec
Telecom, Inc. ("VarTec"), PointOne Telecommunications, Inc., Unipoint Holdings, Inc.,
Unipoint Enhanced Services, Inc. (d/b/a "PointOne"), Unipoint Services, Inc.

(collectively "Unipoint"), Transcom Holdings, Inc., Transcom Enhanced Services, LLC, Transcom Communications, Inc. (collectively "Transcom"), and JOHN DOES 1-10 allege as follows:

NATURE OF THE ACTION

1. This case involves defendants' failure to pay legally required charges for their use of plaintiffs' local network facilities to complete long-distance calls. VarTec is a long-distance carrier headquartered in Dallas. It pioneered the use of "dial around" long-distance service, where a customer dials 10-10-287 or some other "10-10" number to bypass the line's regular long-distance carrier in favor of VarTec. VarTec now offers various long-distance and local calling plans to end users.

2. Whenever one of VarTec's customers makes a long-distance call to a local telephone customer served by one of the plaintiffs, VarTec uses plaintiffs' local facilities to complete, or "terminate," the long-distance call. Pursuant to federal and state tariffs on file with the Federal Communications Commissions ("FCC") and state regulatory bodies, VarTec is required to pay plaintiffs for this "access" to plaintiffs' local exchange facilities. Beginning in 2001 or earlier and continuing to the present, however, VarTec orchestrated and implemented a fraudulent scheme to avoid these tariffed "access charges" by delivering its long-distance calls to so-called Least Cost Routers ("LCRs"), which in turn deliver calls to plaintiffs for termination, often through still other intermediaries, over facilities that are restricted to local traffic. Currently, plaintiffs estimate that VarTec is using this scheme to avoid terminating access charges on fully 50% of the long-distance calls it carries. Plaintiffs accordingly seek not only to recover the access charges that VarTec, in many cases with the assistance of other carriers,

principally Unipoint and Transcom, has unlawfully avoided – which plaintiffs preliminarily estimate to be between \$19 million and \$35 million, not including late fees and interest – but also to enjoin defendants from perpetuating this unlawful conduct.

3. Plaintiffs also seek to recover unpaid access charges for interexchange traffic – whether or not carried at some point by VarTec – that is terminated to plaintiffs over local interconnection facilities by the principal LCRs participating in VarTec's unlawful scheme: defendants Unipoint and Transcom. These carriers operate networks that use the Internet Protocol ("IP") to transmit calls. After receiving long-distance calls from interexchange carriers (among them VarTec), Unipoint and Transcom convert those calls from a "circuit-switched" format, in which ordinary long-distance calls originate, to IP format. Upon information and belief, Unipoint and Transcom then transport that traffic in IP format for some distance across their networks. Unipoint and Transcom then convert the traffic back to circuit-switched format and hand it to plaintiffs for termination, typically via competitive local exchange carriers ("CLECs"), through facilities designated for local calls.

4. Like VarTec, Unipoint and Transcom are legally required to pay access charges for the interexchange traffic they deliver – either directly or through intermediaries – to plaintiffs for termination. And, like VarTec, Unipoint and Transcom have failed to pay those fees in the past, and that failure persists today. Accordingly, plaintiffs seek injunctive relief against Unipoint and Transcom as well, and they also seek payment of all unpaid access fees for all interexchange traffic Unipoint and Transcom have transmitted to plaintiffs (directly or indirectly).

5. VarTec has sought to justify its access-avoidance scheme by claiming that, once it hands a long-distance call to an LCR, it is not responsible for how that call is terminated or whether terminating access charges are paid. See VarTec Petition for Declaratory Ruling (FCC filed Aug. 20, 2004). VarTec has taken this position even though the calls that it hands off to LCRs are placed in the same manner and using the same facilities as other long-distance calls; even though neither the calling nor the called party has any idea that a “handoff” or “protocol conversion” has taken place; and, most fundamentally, despite the clear statement of the FCC that long-distance carriers cannot avoid responsibility for access charges by handing off traffic to other entities or by carrying calls using IP.

6. On April 21, 2004, the FCC unanimously rejected a claim, made by long-distance giant AT&T Corp., that long-distance calls should be exempt from access charges when they are transported in part using the IP format. See Order, *Petition for a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (Apr. 21, 2004) (“FCC Access Charge Order”). In rejecting AT&T’s petition, the FCC held:

[W]hen a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the {public switched telephone network} . . . and terminate on the {public switched telephone network}, the interexchange carrier is obligated to pay terminating access charges. *Our analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.*

Id. at 7470, ¶ 19 (emphasis added). In light of this decision, defendants have no excuse for their failure to pay lawfully tariffed access charges for all of the long-distance voice